

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MANUEL ACOSTA, on Behalf of Himself
and All Other Similarly Situated Individuals,

Plaintiff,

v.

TYSON FOODS, INC.,

Defendant.

8:08CV86

MEMORANDUM AND ORDER

This matter is before the court on the plaintiffs' updated damages calculation, [Filing No. 332](#), and the defendant's response thereto, [Filing No. 333](#). The plaintiff has submitted two calculations: one for "Damages for Each Class Member Removing Uncompensated Time for One Paid Break Prior to 2/1/10 and Allowing Extra Portion of 5 Minutes to Mitigate Other Uncompensated Time After 2/1/10," indicating damages at the rate of overtime pay that total \$6,258,329.74 ([Filing No. 332-1 at ECF pp. 1-94](#)) and one for "Damages for Each Class Member Removing Uncompensated Time for One Paid Break Prior to 2/1/10 and Allowing Extra Portion of 5 Minutes to Mitigate Other Uncompensated Time After 2/1/10," indicating damages at the rate of regular pay that total \$1,547,276.42 ([Filing No. 332-1 at ECF pp. 95-188](#)). The defendant objects to any recovery of damages at the regular rate of pay in the judgment. [Filing No. 333](#), Response at 4.

In earlier orders and at trial, the court found that the plaintiffs could not recover for regular time. See [Filing No. 311](#), Findings of Fact and Conclusions of Law at 48 ([Filing No. 311 at ECF p. 48](#)); [Filing No. 292](#), Transcript (Vol. II) at 570-74 ([Filing No. 292 at ECF pp. 299-303](#)). Accordingly, the court finds the appropriate amount of

compensatory damages in this case is \$6,258,329.74. A judgment in accordance with that finding will issue this date.

DATED this 30th day of January, 2014.

BY THE COURT:

s/ Joseph F. Bataillon

United States District Judge